HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No. 16847 of 2000

Dated 05th July, 2007.

Between

Smt. Shaik Mumtaz Begum and ors

……Petitioners

and

Dredging Corporation of India Limited,
Rep. by its Managing Director, Dredge House,
Port Area, Visakhapatnam, and anr.

…Respondents

HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No. 16847 of 2000

ORDER:

In this Writ Petition, the petitioners have questioned the order of rejection dated 12-1-1999 in the application in CMP.No. 3 of 1996 filed by them under Section 33 C(2) of the Industrial Disputes Act, 1947, passed by the Chairman, Industrial Tribunal-cum-Labour Court, Visakhapatnam.

The first petitioner is the wife and petitioners 2 and 3 are children of one late Sri S.M.Saheb, who worked as 'Seaman' on Board Dredger No.9 owned by the first respondent-Dredging Corporation of India

Limited. Originally, the petitioner was appointed as Mechanician-III on 11-4-1984, but however, he was discharged from service on 12-4-1995 in view of certification by the doctor of the Corporation that he was unfit to continue in service in view of ailments suffered by him. During his service, he was treated in the hospital at Goa and further in the hospital at Bombay and ultimately he was diagnosed that he was suffering with Heamatunia Supra Renal Tumor (LT) with Nodules in Liver and Para Vertibral region. After his discharge from service, as per the terms and conditions of the agreement which was in force between the Employees Union and the first respondent-Corporation, he was paid an amount of Rs.1,20,000/- towards compensation, in addition to his terminal benefits amounting to Rs.2,59,000/-. However, he was claiming further amount of Rs.7,00,000/- towards compensation in terms of Clause 147 of INSA/NUT agreement entered into between the Employees Union and first respondent-Corporation, and, an amount of Rs.5,00,000/- towards damages, along with interest. The said amount was claimed by filing an application in CMP.No.3 of 1996 before the Industrial Tribunal under Section 33 C(2) of the Industrial Disputes Act, 1947.

The first respondent-management resisted the said claim by disputing maintainability of the petition in view of provision under Section 150 (9) of the Merchant Shipping Act 1958. It also disputed its liability on merits pleading that the disease of the workman cannot be treated as one arising out of employment for payment of compensation under Clause 147 of the agreement.

The Tribunal below by impugned Award, without going into the merits of the claim, rejected the application filed under Section 33C(2) of the Industrial Disputes Act, 1947 by recording a finding that the

application filed by the deceased employee is not maintainable in view of the provision under Section 150 of the Merchant Shipping Act, 1958.

Before proceeding further, I deem it appropriate to refer to certain provisions of the Merchant Shipping Act, 1958.

Section 2 of the Merchant Shipping Act, 1958 reads as under:

" 2: **Application of Act:** (1) Unless otherwise expressly provided, the provisions of this Act which apply to :--

(a) any vessel which is registered in India, or

(b) any vessel which is required by this Act to be so registered; or

(c) Any other vessel which is owned wholly by persons to each of whom any of the descriptions specified in Clause (a) or in Clause (b) or in Clause (c), as the case may be, of Section 21 applies, shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided the provisions of this Act which apply to vessels other than those referred to in sub-Section (1) shall so apply only while any such vessel is within India, including the territorial waters thereof.

Sub-Section (42) of Section 3 of the Merchant Shipping Act 1958 reads as under:

: " 'Seaman' means every person (except a master, pilot or apprentice) employed or engaged as a member of the crew of a ship under this Act, but in relation to Sections 178 to 183 (inclusive) includes a master."

Sub-Section (9) Section 150 of the Merchant Shipping Act, 1958 reads as under:

: Nothing contained in the Industrial Disputes Act, 1947 shall apply to any dispute between seamen or any class of seamen or any union of seamen and the owners of ships in which such seamen are employed or are likely to be employed.

In this case, it is not in dispute that the deceased employee worked as Seaman on the Dredger. Though it is contended by Sri N.Subbarao, learned Counsel appearing for the petitioner that the petitioner did not work on boat, or, vessel within the meaning of the Merchant Shipping Act, 1958, but however, dredger is also nothing but a boat for dredging harbours or other bodies of water. It is further submitted by the learned Counsel for the petitioner that as per the settlement arrived at in the agreement, the petitioner is entitle to further compensation of Rs.7,00,000/-, but however, that is a matter of dispute. It is the specific case of the first respondent-corporation that the compensation payable under Clause 147 of the agreement entered between the Union and first respondent-Corporation is not applicable to the petitioner for claiming any compensation. It is the further case of the first respondent that the deceased workman did not suffer any disability or injury arising out of or in the course of employment, and, as such, the petitioner is not entitle to any further compensation.

In view of the stand of the first respondent-Corporation, it is clear that there is a dispute between the petitioner, who is a member of Crew of the ship and the first respondent-Corporation, who is the owner of the Dredger. A composite reading of the provisions under Sections 2, 3(42) and 150(9) of the Merchant Shipping Act, 1958, it is clear that there is specific exclusion of the applicability of the provisions of the Industrial Disputes Act, 1947 to the disputes of such

nature between the deceased employee and the first respondent-Corporation. Though the petitioner has placed reliance on the judgment of the Delhi High Court in the case of *Om Prakash Jhummam Lal Vs. Labour Court*[1], and, on the judgment of the Mysore High Court in the case of *A.Munivenkataiah Vs. General Manager, Government Soap Factory*[2], but, both judgments will not support the case of the petitioner with regard to question involved in the Writ Petition, which is confined to maintainability of the petition filed under Section 33 C (2) of the Industrial Disputes Act, 1947, having regard to exclusion of jurisdiction under Section 150(9) of the Merchant Shipping Act, 1958.

For the above said reasons, I do not find any merit in the Writ Petition warranting interference with the Award of the Tribunal below. Leaving open to avail recourse to any other remedy under law, the Writ Petition is dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 05--07-2007.
Msnr.

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[1] AIR 1968 Delhi 158

[2] 1972—1. LLJ. 355